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BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE FORMAL
COMPLAINT OF KIM JORGENSEN,

COMPLAINANT,

vs.

TUCSON ELECTRIC POWER COMPANY,

RESPONDENT.

DOCKET NO.

E-01933A-09-0245

PROCEDURAL
CONFERENCE

At: Tucson, Arizona

Date: September 15, 2009

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, 400 West Congress,
4 Tucson, Arizona, commencing at 10:02 a.m. on the 15th of
5 September, 2009.

6

7

BEFORE: BELINDA A. MARTIN, Administrative Law Judge

8

9 APPEARANCES:

10

For the Complainant:

11

In Propria Persona
12 3737 East Bellevue Street, Apartment 4
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13 (Appearing via teleconference)

14

For the Respondent:

15

TUCSON ELECTRIC POWER COMPANY
16 By Ms. Chiara Durando
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19

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COLETTE E. ROSS
21 Certified Reporter
Certificate No. 50658
22 (Appearing via teleconference)

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1 ALJ MARTIN: Good morning. This is the time set
2 for procedural conference in Docket No. E-01933A-09-0245
3 in the matter of the formal complaint of Kim Jorgensen,
4 complainant, versus Tucson Electric Power Company,
5 respondent.

6 This is Belinda Martin, the administrative law
7 judge assigned to this matter. And at this time what I
8 would like to do is call the participants.

9 And here on behalf of the complainant,
10 Mr. Jorgensen, could you please identify yourself.

11 MR. JORGENSEN: Kim Jorgensen.

12 ALJ MARTIN: Would you spell that, please.

13 MR. JORGENSEN: K-I-M, Jorgensen,
14 J-O-R-G-E-N-S-E-N.

15 ALJ MARTIN: All right. Colette, can you hear
16 everybody okay?

17 THE REPROTER: So far.

18 ALJ MARTIN: And on behalf of the respondent.

19 MS. DURANDO: Chiara Durando, C-H-I-A-R-A,
20 D-U-R-A-N-D-O.

21 ALJ MARTIN: All right. Thank you.

22 MS. DURANDO: And with me are Martin Lopez,
23 M-A-R-T-I-N, L-O-P-E-Z; and Brenda, B-R-E-N-D-A, Bevard,
24 B-E-V-A-R-D.

25 ALJ MARTIN: All right. Very well.

1 So, Colette, you are able to hear everybody
2 well, correct?

3 THE REPORTER: Yes.

4 ALJ MARTIN: Since we are on the phone, for the
5 court reporter's benefit, if you speak,
6 Mr. Jorgensen -- well, since we have -- anyway, identify
7 yourself when you speak just so Colette knows who is
8 talking. All right, Mr. Jorgensen?

9 MR. JORGENSEN: Okay.

10 ALJ MARTIN: All right. The purpose for today's
11 procedural conference is just to not really discuss any
12 factual matters, Mr. Jorgensen, really more to get an
13 idea of where we are in the process and what sort of --
14 what is going to happen next.

15 MR. JORGENSEN: Okay.

16 ALJ MARTIN: But the first thing I wanted to
17 discuss today is as part of TEP's answer to the
18 complaint was a motion to dismiss. And the motion to
19 dismiss was based on the fact that this has been dealt
20 with informally through Staff at the Commission and
21 Staff made its decision and, therefore, this should
22 already be dismissed since it was already heard. That
23 was part of the motion to dismiss.

24 But under, let's see, Administrative Code
25 R-14-2-212(C)(1)(E), a decision of the Commission

1 representative in an informal complaint process is not
2 binding on the parties and the parties still have a
3 right to make a formal complaint, which is what this is.

4 As such, I find under the Arizona Administrative
5 Code the motion to dismiss must be dismissed or must be
6 denied. And I will issue a procedural order to that
7 effect, but I wanted to give you that information so we
8 can move on from here. All right?

9 MS. DURANDO: Thank you.

10 ALJ MARTIN: All right. So actually, if I could
11 start with -- I am sorry, Durando?

12 MS. DURANDO: Yes.

13 ALJ MARTIN: If I could start with Ms. Durando.
14 If you will excuse me, Mr. Jorgensen.

15 Ms. Durando, has TEP made any other, had any
16 other contact with Mr. Jorgensen to discuss this matter
17 since the complaint was filed?

18 MS. DURANDO: No, we have not.

19 ALJ MARTIN: All right. Mr. Jorgensen, have you
20 made any other attempts to contact folks at TEP since
21 you filed the complaint?

22 MR. JORGENSEN: No, I have not.

23 ALJ MARTIN: All right. So then I guess what we
24 need to discuss is, if the parties still believe they
25 are at an impasse, that I think I need to go ahead and

1 set this for a hearing.

2 Mr. Jorgensen, do you feel that you have reached
3 an impasse, without going into any factual discussion,
4 sir?

5 MR. JORGENSEN: Yes. There hasn't been any
6 further movement at all since I filed the complaint.

7 ALJ MARTIN: Okay. And you still, and TEP still
8 believes that, Ms. Durando?

9 MS. DURANDO: I would agree.

10 ALJ MARTIN: All right. So what I wanted to do
11 is discuss some possible hearing dates. And I will
12 advise everybody that right now the Commission and the
13 Hearing Division are so busy we are looking at hearing
14 dates into January and February 2010. Yes, it is a
15 little crazy over here.

16 So as opposed to picking a specific date, what I
17 need to do is get a feel from everybody as to what their
18 availability might be for certain periods of time.

19 Mr. Jorgensen, do you know if you plan on
20 calling any witnesses?

21 MR. JORGENSEN: It is possible, but depends on
22 availability, because the accountant is in Los Angeles
23 but I have got to arrange for that.

24 ALJ MARTIN: All right. But if you had, you
25 know, fair amount of notice do you think that the

1 accountant --

2 MR. JORGENSEN: Well, there would possibly be
3 the manager of the building, also.

4 ALJ MARTIN: Okay. And what will happen in that
5 regard is that, in the procedural order setting the
6 hearing, there will be deadlines for submission of a
7 witness list and of an exhibit list.

8 And do you intend to remain unrepresented by
9 counsel?

10 MR. JORGENSEN: At this point, yes, but it is
11 possible that I might hire a lawyer. I would have to --
12 it depends on the cost, obviously. The amount of
13 this --

14 ALJ MARTIN: Okay. Let me ask --

15 MR. JORGENSEN: The amount is not very large,
16 so, you know, I don't know if it would be cost
17 effective.

18 ALJ MARTIN: Let me ask a question, because this
19 kind of confused me. This is filed under your name, but
20 is this -- are you representing a property management
21 company or something?

22 MR. JORGENSEN: It was -- the building has now
23 been transferred to a property management company, which
24 is also run by me, but it is a technical matter. It is
25 now in the name of an LLC, whereas before while this

1 dispute was going on it was in my name personally.

2 ALJ MARTIN: Okay. So do you believe at this
3 point in time that you are doing this on behalf of the
4 property management company or are you still doing this
5 on behalf of yourself?

6 MR. JORGENSEN: Well, ongoing in the future
7 activity our dealings are with TEP, which is part of
8 this, to get this resolved has been -- is on behalf of
9 the property management company. But the actual dispute
10 and the time period in which that occurred is for me
11 personally. So I think that the property management
12 company is probably just inheriting whatever is decided,
13 and, therefore, it is probably just more efficient to
14 leave it as it is in my name.

15 ALJ MARTIN: Okay. Okay. The reason I am
16 hesitating is because I am trying to puzzle out what
17 witnesses you intend to call and that sort of thing,
18 because if anybody is from a property management
19 company, they wouldn't have knowledge of the facts
20 relevant to the case at the time they occurred. So the
21 accountant that you are thinking of calling, for
22 example, would be an accountant familiar with the
23 company or with the books of the complex or whatever at
24 the time it occurred or just --

25 MR. JORGENSEN: Yes. Just to clarify, I am

1 essentially the same property management company. There
2 has been no change in personnel or anything of the
3 technical. It was just that we decided to continue to
4 do business as an LLC rather than as individually. So
5 it is really the same, it is really the same accountant
6 on both.

7 ALJ MARTIN: Okay. The dilemma I face as an
8 administrative law judge is making sure that the proper
9 parties are part of the suit. Okay?

10 MR. JORGENSEN: Correct.

11 ALJ MARTIN: So normally when we have an entity
12 that is not represented by counsel, I have to get some
13 sort of resolution or memorandum authorizing that person
14 to appear on behalf of the company. However, since this
15 gl

16 all occurred before you became an LLC, we will go with
17 that, that you are just bringing this on your own.

18 MR. JORGENSEN: Okay.

19 ALJ MARTIN: Ms. Durando, do you have any
20 thoughts?

21 MS. DURANDO: We were not aware that Landmark
22 Properties was doing business currently as an LLC.

23 Mr. Jorgensen, is it just Landmark Properties,
24 LLC? Or could I get the name of the property management
25 company?

1 MR. JORGENSEN: Yes. Actually Landmark
2 Properties is just me. It is just a dba --

3 MS. DURANDO: Okay.

4 MR. JORGENSEN: -- of myself.

5 MS. DURANDO: Okay.

6 MR. JORGENSEN: And the property management
7 company which it was transferred into was Bellevue
8 Winstel Properties.

9 ALJ MARTIN: Could you say the name slowly.

10 MR. JORGENSEN: Bellevue, B-E-L-L-E-V-U-E,
11 Winstel, W-I-N-S-T-E-L, Properties, LLC.

12 ALJ MARTIN: Okay.

13 MS. DURANDO: No, provided that obviously the
14 witnesses that Mr. Jorgensen desires to call have
15 knowledge of what occurred at the time of the dispute,
16 we would not have any objection.

17 ALJ MARTIN: Okay. You wouldn't, you wouldn't
18 object to going ahead and proceeding with him in his
19 sole -- you know what I am trying to say.

20 MS. DURANDO: Yes, on his own behalf --

21 ALJ MARTIN: Right.

22 MS. DURANDO: -- or his own capacity. We would
23 have no objection to that.

24 ALJ MARTIN: Okay, all right.

25 MR. JORGENSEN: As regards --

1 ALJ MARTIN: Yes.

2 MR. JORGENSEN: -- the -- you mentioned a list
3 of exhibits. Is there any kind of, obviously since I am
4 in pro per, I am not familiar with this, but is there
5 any kind of a discovery process that just -- are there
6 any documents I can ask from them, from the other party?

7 ALJ MARTIN: If there is information you wish,
8 you can certainly ask them for it. This is -- although
9 we normally follow the Rules of Civil Procedure here, we
10 are pretty informal.

11 MR. JORGENSEN: Okay.

12 ALJ MARTIN: Okay? So I think if you ask the
13 company for it, they would probably provide you with the
14 information. If they don't, you can always file a
15 request, you know, asking me to require the company to
16 provide that information. And then I would look at it
17 and see if that's something that the company could be
18 compelled to provide. Okay?

19 MR. JORGENSEN: Okay. The reason I ask is
20 because -- okay.

21 ALJ MARTIN: Okay?

22 MR. JORGENSEN: Yes. Because part of the
23 complaint is that they have not been providing certain
24 accounting information to us. And I am just wondering
25 if that is something I have to wait for a decision from

1 the hearing on or something that I can request as a
2 separate request.

3 ALJ MARTIN: All right. And I understand what
4 you are saying. Part of the issue is you can request
5 it, but if the company does not have it, that is not
6 something that they are able to provide. Just because
7 you believe in your opinion that it is something that
8 the company should have doesn't mean that they do.

9 MR. JORGENSEN: Okay.

10 ALJ MARTIN: And I don't know one way or another
11 whether that is true or not. But if you have -- if they
12 are not providing you something you think they should
13 have, you know, I could always ask, I can compel them to
14 provide that information, but their response will
15 probably be the same.

16 If you have evidence that would show that, yes,
17 they do have it, then you can present that as well. But
18 again, you know, you can ask for something, but if they
19 don't have it, they can't provide it.

20 Does that make sense?

21 MR. JORGENSEN: Yes.

22 ALJ MARTIN: Okay. So certainly feel free to
23 ask them for anything. Same with the company, of
24 course, if they need you to provide something to them,
25 they have that, a right as well. But because the

1 hearing date would necessarily be set so far out, there
2 would be plenty of time for discovery requests back and
3 forth and that sort of thing. And the witness and
4 exhibit lists would probably not be due until probably a
5 month before the hearing. Then I will also be setting a
6 prehearing conference about a week or so before the
7 hearing itself just to see where we are and make sure
8 everybody is satisfied they need to be where they need
9 to be for purposes of the hearing okay.

10 MR. JORGENSEN: Okay.

11 ALJ MARTIN: Does that make sense?

12 MR. JORGENSEN: As far as making these requests,
13 I think Ms. Durando, I think I have spoken with her
14 before. Who should I be contacting to make that request
15 of TEP?

16 MS. DURANDO: Mr. Jorgensen, this is Ms. Durando
17 speaking. You can certainly contact me. I am the
18 corporate, one of the corporate attorneys for Tucson
19 Electric Power. And I believe we have your contact
20 information. I can get ahold of you and provide you
21 with my contact information.

22 MR. JORGENSEN: Okay.

23 ALJ MARTIN: Okay. All right. Let's see. I
24 know it is so far out, but is anybody aware of anything
25 immediately that would block out certain time frames for

1 the month of January or February?

2 MR. LOPEZ: This is Martin Lopez. The end of
3 February would probably be a conflict with other things.
4 Other than that January and February end of the month
5 are available.

6 ALJ MARTIN: Okay.

7 MS. DURANDO: I am checking my BlackBerry here.
8 Hold on.

9 ALJ MARTIN: Mr. Jorgensen, why don't you go
10 ahead if you know.

11 MR. JORGENSEN: Again, it is so far out, I don't
12 have anything on my calendar at this point.

13 ALJ MARTIN: Okay. And what -- the procedural
14 order setting the hearing would probably go out within
15 the next week or so. So that would give you plenty of
16 time to, you know, for one, put it on your calendar, but
17 if it doesn't work, you have time to file a request for
18 a change of hearing date. Okay?

19 MR. JORGENSEN: Okay.

20 ALJ MARTIN: Ms. Durando.

21 MS. DURANDO: We are available, both Ms. Bevard
22 and I are available after the second week of
23 January going forward.

24 ALJ MARTIN: Okay. And I will tell you that my
25 only conflict right now is I have a three-day hearing

1 set in the middle of January. So that doesn't sound
2 like we have got any serious scheduling issues. But
3 when I actually set it for will depend on what the rest
4 of the ALJs have set and the availability of hearing
5 rooms and that sort of thing. And, of course, the
6 hearing will be scheduled for hearing here in Tucson.

7 So let's see. Mr. Jorgensen, is there anything
8 else you need to talk about?

9 MR. JORGENSEN: No. I can't think of
10 anything --

11 ALJ MARTIN: Okay.

12 MR. JORGENSEN: -- at this point.

13 ALJ MARTIN: Okay. Ms. Durando.

14 MS. DURANDO: I don't believe so, no.

15 ALJ MARTIN: Okay. All right. So it is going
16 to be awhile before we speak again. But I would, of
17 course, encourage the parties to try to reach an
18 amicable solution to this, of course. Reaching a
19 compromise is far better than having one forced on you
20 by a judge. So hopefully that will be able to be worked
21 out.

22 But in any event, I will issue a procedural
23 order sometime in approximately the next week setting a
24 hearing date and deadlines for exhibits and witness
25 lists and also setting the prehearing conference.

1 Mr. Jorgensen, anything else on your end?

2 MR. JORGENSEN: No, just -- I don't have
3 anything else.

4 ALJ MARTIN: Okay. Ms. Durando, anything else
5 for you?

6 MS. DURANDO: No.

7 ALJ MARTIN: Okay. Colette.

8 (An off-the-record discussion ensued.)

9 ALJ MARTIN: If there is nothing else, let's go
10 ahead and go off the record.

11 (The proceedings concluded at 10:21 a.m.)

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1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

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I, COLETTE E. ROSS, Certified Reporter No.

50658 for the State of Arizona, do hereby certify that

the foregoing printed pages constitute a full, true and

accurate transcript of the proceedings had in the

foregoing matter, all done to the best of my skill and

ability.

WITNESS my hand this 23rd day of September,

2009.



COLETTE E. ROSS
Certified Reporter
Certificate No. 50658